ESTOPPEL—NON-LIABILITY—DENIAL AT TRIAL.—The plaintiff was injured by an automobile owned by B, who had formerly been the agent of the defendant, but who prior to the accident had bought the latter's local business and was conducting it as his own. However, the sign or name of the defendant was continued on the place of business, and its name, with B as manager, was continued in the city and telephone directories. The plaintiff wrote the defendant regarding the accident, and received no reply; she later brought suit, to which the defendant entered a general denial; at the trial it proved the sale to B. The plaintiff contended that the defendant was estopped at the trial to deny B's agency, after prescription had run in favor of B. *Held,* there was no estoppel. *Jung* v. *New Orleans Ry. & Light Co.* (La. 1919) 82 So. 870.

In general, tort liability cannot be founded on estoppel, since the damage does not arise from any reliance by the plaintiff upon representations that the defendant was an employer or principal. See *Shapard* v. *Hynes* (C. C. A. 1900) 104 Fed. 449; *Smith* v. *Bailey* (1891) 60 L. J. Q. B. 779; *Quarman* v. *Burnett* (1840) 6 M. & W. *499, *509; *contra, Stables* v. *Eley* (1824) 1 Carr. & Payne *614. An exception to the rule is in the case of torts arising out of a contractual relation, where there may have been reliance on such representations. *Hannon* v. *Siegel Cooper Co.* (1901) 167 N. Y. 244, 60 N. E. 597; *Maxwell & Downs* v. *Gibbs* (1871) 32 Iowa 32. In the instant case, as the court points out, to say that the plaintiff relied on the defendant's representations in being struck by the automobile would in effect be to imply that the plaintiff deliberately contributed to the accident. The more interesting question is whether an estoppel is effected by representations or conduct which induce a plaintiff to bring suit against a party not really liable. No estoppel is effected by mere failure before trial to deny liability, *Phillips* v. *Aluminum Co. of A.* (1917) 256 Pa. 205, 100 Atl. 750, nor by representations not intended nor reasonably likely to mislead the plaintiff as to the defendant's responsibility; *Barnett* v. *Kemp* (1914) 258 Mo. 139, 157, 167 S. W. 546; *cf. Jackson* v. *Pixley* (1852) 63 Mass. 490; and this is so though through the mistake the plaintiff's action against the parties really liable has been lost. *Baxter* v. *Jones* (C. C. 1910) 185 Fed. 900. But the contrary view has been taken where the defendant has made an affirmative representation with the actual intention or proximate consequence of inducing the plaintiff to bring action against him, *Ripley* v. *Priest* (1912) 169 Mich. 383, 135 N. W. 258; *Robb* v. *Shephard* (1883) 50 Mich. 189, 15 N. W. 76; *Hall* v. *White* (1827) 3 Carr. & Payne *136; *contra, Lewis* v. *Prenatt* (1865) 24 Ind. 98; *Eikenberry & Co.* v. *Edwards* (1885) 67 Iowa 14, 24 N. W. 570, particularly where the latter's cause of action against the real party defendant has been lost. *Baird* v. *Vaughn* (Tenn. 1890) 15 S. W. 734.

INSANE PERSONS—CONTRACTS—GOOD FAITH OF OTHER PARTY—PROMISSORY NOTE.—The plaintiff, not knowing of the insanity of the defendant, lent him a sum of money, for which the latter gave the plaintiff his promissory note due in one year. The defendant had not been adjudged insane. *Held,* the plaintiff could recover, since that was the only way in which the parties could be put in *statu quo*. *Merchants' Nat. Bank of Detroit* v. *Coyle* (Minn. 1919) 174 N. W. 309.

The weight of authority is that ordinarily contracts made by an insane person are merely voidable, not void. 14 Columbia Law Rev. 674, 675. A recognized exception to this rule is that advanced in the instant

case, namely, that where one party, in ignorance of the insanity of the other and before adjudication of insanity, has performed his part of the agreement, the contract cannot be avoided if the parties cannot be put in *statu quo*. 14 Columbia Law Rev. 674, n. 1. Naturally, in those jurisdictions where the contracts of insane persons are absolutely void, this does not obtain. *Elder* v. *Schumacher* (1893) 18 Colo. 433, 33 Pac. 175; *cf. Milligan* v. *Pollard* (1896) 112 Ala. 465, 20 So. 620. But in a few of the jurisdictions where the contract of one who has not been judicially declared insane is considered not wholly void but voidable, the privilege of the insane person to avoid it is unconditional and does not depend upon the good faith or knowledge of the other party, *Seaver* v. *Phelps* (Mass. 1831) 11 Pick. 304; see *Campbell* v. *Campbell* (1913) 35 R. I. 211, 85 Atl. 930, and may be exercised though it is impossible to restore the consideration or put the parties in *statu quo*. *Bates* v. *Hyman* (Miss. 1900) 28 So. 567. The reason given is that the contracts of an insane person are on the same footing as those of an infant. *Seaver* v. *Phelps, supra.* In those jurisdictions the rule of the instant case would seem to apply to persons of "weak understanding" only. See *Seaver* v. *Phelps, supra; Campbell* v. *Campbell, supra.* The rule of the instant case is subject to the exception that where the lunatic has not received the benefit of the consideration the contract will be set aside without a return of the consideration. *Jordan* v. *Kirkpatrick* (1911) 251 Ill. 116, 95 N. E. 1079; *see Feigenbaum* v. *Howe* (1900) 32 Misc. 514, 66 N. Y. Supp. 378. It would seem that the holding of the instant case is not strictly logical, 6 Columbia Law Rev. 115, and the reason assigned for the rule, namely, not that the legal essential of consent is present, but that the insane person by means of an apparent contract has secured an advantage or benefit which cannot be restored to the other party, *Matthiessen & Weichers Refining Co.* v. *McMahon's Adm'r* (1876) 38 N. J. L. 536; see *Flach* v. *Gottschalk* (1898) 88 Md. 368, 374, 41 Atl. 908, would seem to be a confusion of contractual with quasi-contractual principles; see 6 Columbia Law Rev. 116; 4 Columbia Law Rev. 433; but is undoubtedly the view of the great weight of authority. *Imperial Loan Co.* v. *Stone* [1892] 1 Q. B. 599.

INSURANCE—ACCIDENT—CHANGE OF OCCUPATION AS AFFECTING THE RISK.—A policy insured the deceased "while he is engaged in the occupation of a physician and surgeon". At the time of effecting the insurance, the deceased was engaged in the practice of his profession and was also an officer in the State Guard. During a strike, the Guard was called out to suppress belligerent opposition to the constituted authorities, and the deceased joined his command in the capacity of a medical officer wearing the Red Cross insignia. He divided his time between his private practice and his duties with the Guard, and in the morning of the very day of his death attended private patients. In the afternoon, while dressing a wounded officer on the field, the assured was shot and killed. The insurer contended, as a defense to an action on the policy, that the assured at the time of his death was not engaged "in the occupation of physician and surgeon" and that a fair interpretation of the contract was that the risk contemplated was confined to the practice of medicine in civil life and not in the army. *Held,* the insurer was liable. *Interstate Business Men's Acc. Ass'n.* v. *Lester* (C. C. A. 8th Cir. 1919) 257 Fed. 225.